

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 21

BCI COCA COLA BOTTLING COMPANY  
OF LOS ANGELES<sup>1</sup>

Employer

and

Case 21-RC-20696

BOTTLES, DRIVERS, SALESMEN AND  
HELPERS, BREWERS, MALTSTERS, YEAST  
WORKERS AND CLERICAL EMPLOYEES,  
LOCAL 896, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

Petitioner

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**DECISION AND DIRECTION OF ELECTION**

Upon petitions duly filed under Section 9(c) of  
the National Labor Relations Act, as amended, a hearing was

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

conducted before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.<sup>2</sup>

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and seeks to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>2</sup> These cases were consolidated by Order of the Acting Regional Director on November 21, 2003.

5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time checkers employed by the Employer at its facility located at 1334 South Central Avenue, Los Angeles, California; excluding all other employees, professional employees, guards and supervisors as defined in the Act.

All full-time and regular part-time checkers employed by the Employer at its facility located at 11536 South Patton Road, Downey, California; excluding all other employees, professional employees, guards and supervisors as defined in the Act.

#### **ISSUES:**

The Employer contends that the employees in the petitioned-for units are guards within the meaning of Section 9(b)(3) of the Act, and thus cannot be represented by Petitioner. Petitioner, on the other hand, asserts that the checkers are statutory employees who perform inventory control functions.

#### **CONCLUSION:**

For the reasons discussed in detail below, based on the totality of the record, I conclude that the checkers are not guards within the meaning of Section 9(b)(3) of the Act, and that the petitioned-for units constitute

appropriate units for the purposes of collective-bargaining.

**THE FACTS:**

The Employer is engaged in the production and distribution of non-alcoholic beverages at its facilities in Los Angeles and Downey, California. Although other employees at these facilities are represented by labor organizations, the petitioned-for units of checkers have never been represented.

Both the Los Angeles and Downey facilities employ a variety of workers, including warehouse workers, loaders, drivers, checkers, security guards, loss prevention employees, and others. The duties of the checkers at the two facilities are nearly identical, and shall be described in the conjunctive except where they may differ.

Both facilities at issue herein deliver massive amounts of product to a variety of customers and locations.<sup>3</sup> Basically, the loaders pack and place the appropriate amount of product on the designated trucks according to information generated by a centralized computer program known as BASIS. Bulk deliveries to larger chain supermarkets are made in large trailers ranging from 28 to

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<sup>3</sup> For example, the Los Angeles facility can distribute 600,000 cases of product a week, valued at approximately \$4.2 million. The Downey facility distributes about 500,000 cases of product a day.

45 feet in length. Deliveries to smaller stores are made with "side loaders," with side bays on either side of the vehicle. Service to vending machines, known as "full service" is accomplished with side loaders having 12 bays. In addition to these outbound deliveries, product produced at these facilities is also transported to other distribution centers in the Southern California area: these deliveries are referred to as "transport loads." The task of the loaders is to build loads of product on pallets according to paperwork generated by the Employer.

The Employer's job description for the checkers lists their responsibilities as checking and verifying the loading accuracy of the trucks; verifying routes and vehicles; collecting, matching, and completing appropriate logs for all truck loads; and otherwise assisting the warehouse supervisor. Minimum requirements for this entry-level position include strong math skills, basic computer literacy, understanding of inventory and product accounting systems and procedures, and ability to lift and climb. Most checkers are hired through newspaper ads.

Each facility employs about 10 checkers over three shifts whose job is to certify that the correct amount of product is on each out-bound and in-bound truck. Depending on the particular shift, checkers may observe

either product being built on a staging area before being put on the truck, actual packages of product on pallets, or product already loaded into the truck. Each load is verified by a checker, using diagrams and load tickets, along with "blind counts" of actual product, to verify that the proper amounts of product have been loaded on each truck. Checkers not only verify the quantity of product, but also that the correct product (i.e., particular soft drink or beverage in a specific container) so that proper deliveries can be effectuated and customers kept satisfied.

For out-bound product, the checkers utilize the hand-held computers issued to each driver to generate the driver's invoices. Specifically, the checkers confirm the amount and type of product against the out-bound documents and once everything checks out, the checker enters a password known only to him and the supervisor to activate the hand-held computer. The driver cannot generate invoices at each point of delivery without prior activation by the checker via the password. Trucks do not leave the facilities until both the driver and the checker have signed off on the load-out documents. Drivers in the field have no direct contact with the checkers should problems occur during delivery. Delivered inventory is deducted

from the load on the truck via the held-held computers used by the drivers.

Checkers also keep track of shortages of product and note changes in assigned trucks as part of their inventory process. A number of documents are created and maintained by the checkers, including daily inaccuracy sheets, which note loader errors. These sheets are regularly reviewed by the operations manager to ensure that the proper corrective actions have been taken with regard to shortages and overages of product. The checkers generally do not report repeated shortages to management, but allow the documents to speak for themselves.

In addition verifying out-bound product, checkers also confirm incoming, or "load-in" trucks. Basically, the checkers reconcile the returned product with the load-out documents and the delivery invoices, creating a packet that is turned in at the end of each day. If returning inventory exceeds the out-bound product less the deliveries, the checkers can make the necessary internal adjustments. However, if returning product is short, the shortages must be reported to a supervisor before any adjustment can be made. Drivers are responsible for any shortages not accounted for as reported by the checkers. Checkers do not write up or discipline loaders or drivers

for shortage discrepancies, but merely report them to management.

With regard to deliveries going to or coming from other production/distribution centers, or "transportation loads," the same procedure is followed by the checkers on each end of the transport, at both the originating and receiving facilities. The driver and checker jointly create the paperwork, which can include bills of lading. Often, security guards employed by the Employer place seals on these trucks when they leave the originating facility so that product cannot be removed until delivered at the receiving facility.<sup>4</sup>

The checkers do not have an assigned office, although there is a small office in each facility where they complete paperwork. Generally, the checkers for outgoing product work on the loading docks or in the yard, while those checking in-bound trucks work at the various gates into the facility where the product comes in.

Employer has long been concerned with theft of its products, inasmuch as they have street value and can be easily sold. In this regard, the Employer maintains a number of work rules, including one that specifically

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<sup>4</sup> Apparently, seals can also be placed on side-loaders by the security guards if they are loaded before the driver arrives but after the checker verifies the product so the load cannot be tampered with.



prohibits theft from fellow employees, the Employer, or its customers. Apparently, both loaders and drivers have been disciplined in the past for theft of product. The duties of the checkers are intended not just to control product inventory, but to discourage theft of product through consistent and regular reconciliation. Under the current system, the loader, driver and the checker work together to discourage theft by conforming loads and deliveries, and adjusting for discrepancies. In fact, the proper performance of the checkers' duties would ensure that shortages were just internal adjustments and not missing or misidentified product. The checkers are the only employees who check in detail what is actually on the trucks once they are loaded. Any checker who suspects or observes theft of company property is expected to report it to management, just as any other employee would be expected to do so. Checkers do not conduct investigations of suspected theft.

The Employer also employs security guards at each of these facilities stationed at different posts throughout the plants. These guards wear uniforms and badges (not merely employee identification badges like all other employees), but do not carry guns or weapons. Guards patrol the facility, particularly on the graveyard shift

and on weekends when the facility is generally closed. In this regard, the guards have keys to the entire facility. Guards also check in and inspect visitor vehicles coming to the facility.

If guards observe violations of company rules, they complete incident reports or activity logs. With regard to theft, guards report incidents to the head guard who conducts an investigation during which a guard may be asked to testify. Although each facility has a number of surveillance cameras, the guards' role with regard to these cameras is not clear. Guards may escort individuals, including employees, off the premises. The Employer also maintains a loss prevention department which is responsible for conducting investigations of theft.

In contrast to the duties and responsibilities of the guards, the checkers do not have keys to the facility nor do they patrol the facility. In the past, checkers might stand in briefly for a guard during his restroom break, but this has not happened recently. Checkers are not engaged in the logging in of visitors or inspection of their vehicles.

In the past few months, a small number of checkers had been assisting Employer's drivers in delivering product to supermarkets during the recent retail

clerks strike in Southern California. In this regard, Employer's drivers, who are represented by the Teamsters, have refused to cross the retail clerks' picket lines at the supermarkets to deliver Employer's product and will only take their trucks up to the picket line. At that point, a replacement driver takes the truck to the loading dock, and the assigned checker unloads the product and takes it into the store.

#### **ANALYSIS AND DISCUSSION:**

Section 9(b)(3) of the Act defines a guard as "any individual employed ... to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." Section 9(b)(3) of the Act further prohibits certification of a labor organization as the bargaining representative of a unit of guards if the organization "admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

Employees who are responsible for protecting the property of the employer or customers are deemed guards under the Act. ***Wells Fargo Alarm Services***, 289 NLRB 562 (1988). However, not every employee whose job duties require in some sense the protection or safeguarding

property is a statutory guard. To this end, the Board has limited the granting of guard status to employees whose job duties "encompass the security-type functions generally associated with guards. **BPS Guard Services, Inc.**, 300 NLRB 298, 300 (1990). Employees whose basic duties do not involve the direct and significant protection of property, but whose duties only encompass guard-like activities, are not considered guards within the meaning of the Act. **Tac/Temps and the Philadelphia Bottling Co.**, 314 NLRB 1142, 1143 (1994); see also **Purolator Courier Corp.**, 300 NLRB 812 (1990).

In **Tac/Temps**, *supra*, the precise issue of the status of checkers was addressed by the Board, which concluded that checkers were not statutory guards. The job duties of the checkers in that case were nearly identical to those of the petitioned-for employees herein. Specifically, the checkers in **Tac/Temps** utilized computers to count and record Coca-Cola products and reported any discrepancies to management. As in the instant case, drivers could not begin their routes until the checkers had confirmed the load and entered a security code into the computers. The checkers in **Tac/Temps** also confirmed returning loads, and reported any discrepancies to management, which was responsible for any discipline.

The Board's ruling in ***Tac/Temps*** was further supported by the fact that the employer therein employed uniformed security guards at the facility, and that they, and not the checkers, were responsible for investigating, resolving, or preventing theft and for enforcing company rules. Although the checkers in ***Tac/Temps*** occasionally stood in for the uniformed guards during their breaks or patrols, the Board concluded that this sporadic substitution did not compel a finding that the checkers were statutory guards, since such a substitution was not a substantial or significant part of their duties.

Other factors cited by the Board in ***Tac/Temps*** *supra* likewise exist in the instant case. Specifically, the petitioned-for checkers do not perform traditional security or police-type functions as do the security guards: they do not patrol or have keys to the premises. The published description of their job duties does not include any traditional guard tasks or responsibilities, and the checkers are paid considerably less than the security guards. Moreover, and more importantly, any protection of the Employer's property by the checkers is incidental to their primary clerical function of certifying that the correct amount and type of product leaves and arrives at the Employer's facilities.

The Employer's reliance on cases involving department store fitting room "checkers" is misplaced. In those cases where the store employees who were posted in fitting rooms to confirm articles of clothing taken in and out by customers and to report any discrepancies or suspected theft were found to be statutory guards, the Board emphasized that the focus of these checkers was the protection of the employer's product. In those cases, the fitting room checkers specifically enforced company rules regarding the number of garments that could be taken into a fitting room. In contrast, the checkers in the instant case do not enforce any company rules. Moreover, the Board in *Tac/Temps*, *supra*,<sup>5</sup> distinguished the duties of retail department store fitting room checkers from the duties of checkers like those in the petitioned-for unit. Their respective tasks are not "strikingly similar," as the Employer asserts, since the department store checkers have no involvement whatsoever with verification of store inventory, and are solely engaged in theft prevention on behalf of their employers. In contrast, the Board has consistently held that checkers of the type in the instant case are not statutory guards because they performed duties "ordinarily associated with a clerical checking function

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<sup>5</sup> 314 NLRB 1142, 1143 at fn. 5

and protect[ed] the employer's property solely as an incident to such duties." ***Pepsi-Cola Bottling Co. of Cincinnati***, 189 NLRB 105 at fn.1 (1971).

The Employer's argument that the checkers herein are the "last line of defense" against product misappropriation is of no significance in finding them statutory guards. While it is true that no truck can leave or enter the premises without the contents being confirmed by a checker, the Employer concedes that it requires all three groups of employees who deal with its product - the loaders, the drivers, and the checkers - to each perform their respective duties to prevent possible theft. Thus, there is no evidence to suggest that the checker's role is more crucial than that of the other employees involved in preventing theft. Furthermore, it is management, and not the checkers, who actually determines whether a theft has occurred and whether it warrants disciplinary action, inasmuch as the checkers merely report discrepancies. A mere reporting function does not compel a finding of guard status. ***Lion Country Safari***, 246 NLRB 156 (1979), ***Tac/Temps***, *supra*, at 1143. Moreover, the duty to protect the Employer's property and products are shared by all employees at these facilities.

Although the Employer does not specifically cite the prior sporadic stand-in duties of the checkers for security guards on breaks or the checkers role in the recent retail clerks strike, neither of these occasional occurrences are significant enough to render the checkers statutory guards. Again, these infrequent substitutions are not a substantial part of the checkers' duties, but are incidental to their clerical checking functions of counting and verifying products.

Overall, the record shows that the checkers are not primarily tasked with enforcing rules or protecting property. Rather, the duties of the checkers are ordinarily associated with clerical and inventory functions, in that their duty to protect the Employer's property is incidental to their primary duties. ***In Lion Country Safari, supra***, the Board stated that "the separation of guards and other employees for the purpose of union representation was intended to avoid conflicting loyalties, and to insure an employer that he would have a core of plant protection employees during a period of industrial unrest and strike." Here, the duties of the checkers are to count the product and verify that the correct amount of product is on the Employer's trucks. These are not the circumstances in which the Board felt



conflicting loyalties might exist. For the foregoing reasons, I find that the checkers are not guards within the meaning of Section 9(b)(3) of the Act and therefore Petitioner is not precluded from representing them.

There are approximately 10 checkers at the Los Angeles facility, and 11 at the Downey facility.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the times and places set forth in the Notices of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily load off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commences less than 12 month before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military

services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Bottlers, Drivers, Salesmen and Helpers, Brewers, Maltsters, Yeast Workers and Clerical Employees, Local 896, International Brotherhood of Teamsters, AFL-CIO.**

#### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of alphabetized

election eligibility lists for each facility involved herein, containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the lists available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB 359 (1994). In order to be timely filed, such lists must be received in Region 21, 888 South Figueroa Street, 9<sup>th</sup> Floor, Los Angeles, California 90017, on or before December 24, 2003. No extension of time to file the lists shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirements here imposed.

#### **NOTICE OF POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (3) working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notices. **Club Demonstration Services**, 317 NLRB

349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notices.

**RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5:00 p.m., EST, on December 31, 2003.

DATED at Los Angeles, California, this 17th day of December, 2003.

/s/ Victoria E. Aguayo  
Victoria E. Aguayo  
Regional Director, Region 21  
National Labor Relations Board